



California Fair Political Practices Commission

October 19, 1987

Scott W. Gordon, Esq.
Gordon, DeFraga, Watrous and Pezzaglia
611 Las Juntas St.
P.O. Box 630
Martinez, CA 94553

Re: Your Request for Advice
Our File No. I-87-223

Dear Mr. Gordon:

This letter is in response to your request for advice regarding application of the conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to your position on the City of Martinez Parking Commission. Because of the general nature of your question, we treat your request as one for informal assistance.^{2/}

QUESTION

Do your business and investment interests within the boundaries of the parking district preclude you from participating in actions to solve the current parking problem in the district?

CONCLUSION

You are required to disqualify yourself only as to those decisions which will have a reasonably foreseeable material financial effect on your economic interests.

FACTS

You are currently a member of the City of Martinez Parking Commission. The parking commission was established pursuant to city ordinance and acts under authority of the Parking District Law of 1951 (Sections 35100, et seq, of the Streets and Highways Code). Members of the parking commission are appointed by the chief executive officer of the city, subject

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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to confirmation by the city council. The parking commission consists of five members and shall act for all vehicle parking districts established within the city. Each member of the parking commission must be a resident and qualified elector of the City of Martinez.

The parking commission shall operate, manage, and control the parking places and make and enforce all necessary rules for their use. (Streets and Highways Code Section 35559.) It has the authority to fix, regulate, and collect rentals, fees, or other charges for the use of parking places under its control. It may provide different rates for different classes of customers, or users. (Streets and Highways Code Section 35560.) The parking commission has the responsibility for producing revenues, through fees, rentals or charges for the use of parking places. These revenues, along with any other funds provided by the city council through general fund monies or the issuance of bonds, are to be used to meet the parking needs of the district. (Streets and Highways Code Section 35565.)

There is currently one parking district within the city. This district encompasses a 20 to 30 block area in downtown Martinez and is comprised principally of commercial and professional businesses. Additionally, because Martinez is the county seat, both city and county public buildings are located downtown. There is a small percentage of residential property within the downtown area as well.

You have a 12% ownership interest in the law firm of Gordon, DeFraga, Watrous and Pezzaglia. The law firm is located within the parking district. The law firm leases office space, but owns no real property.

You also plan to become a shareholder in a local Martinez bank with headquarters located within the district. The value of your shares would be greater than \$10,000.

The parking commission will soon be proposing solutions to the downtown parking problem. One or more of the solutions to be proposed may involve the capitalization and erection of a parking structure for the benefit of the district.

There are a limited number of properties available for parking structures within the district. Two of the potential locations are within two blocks of the law practice and the bank.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Your financial interest in the law firm is an investment interest, a source of income and a business entity in which you are a partner. Further, because you have more than a 10% interest in the law firm, you also have an interest in the firm's real property interests, including leasehold

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interests.^{3/} Therefore, you must disqualify yourself from participating in decisions of the parking commission if it is reasonably foreseeable that such decisions would have a material financial effect on the law firm or its property interest in a manner distinguishable from the effect on the public generally.

The possible future interest you have in the bank will not be addressed in this letter. Since your financial interest is purely speculative at this time, we are unable to provide specific advice. However, the rules outlined below and regulations cited below relate to your investment interest in the bank, as well, and can be applied to the specifics of your financial interest when you actually become a shareholder.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is a mere possibility it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The foreseeable effects of decisions of the parking commission are twofold. First, increasing the number of parking places will allow more people to do business in the downtown area. Greater access to downtown businesses is clearly a benefit to the businesses located within the district, as in the case of your law firm. As a result, business income and business property values could increase.

3/ Leasehold interests, except for a periodic tenancy of one month or less, are "interests in real property" for purposes of the Act. (Section 82033, Regulation 18233, copy enclosed.) As owner of a 10-percent or greater interest in the law firm, the law firm's real property interests are considered your real property interests, based on your pro rata interest in the firm. (Section 82033.) For purposes of this letter, we assume that the law firm's leasehold interest is not merely a month-to-month tenancy. We also assume that the value of your pro rata interest in the firm's leasehold interest is \$1,000 or more. Regulation 18729 (copy enclosed) contains guidelines for determining the value of a leasehold interest.

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Another potential action of the parking commission is the assessment of fees in the downtown area to finance a parking structure. Because the law firm is located within the boundaries of the parking district, it is possible that the firm would be required to pay a fee levied by the parking commission either directly or through an agreement with your lessor. These actions of the parking commission would have a reasonably foreseeable financial effect on your business interest.

Materiality

We must next determine whether the effects of the decisions of the parking commission will be material as to your financial interests. The effect of a decision is considered material if it is "significant." (Regulation 18702 (a), copy enclosed.)

Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the effect of a decision on your law practice will be considered material. These guidelines vary with the financial size of the business entity in question. In your case it appears that the guidelines in Regulation 18702.2(g) apply and a decision will have a material effect on your law practice if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

Calculating the effect of a decision of the parking commission on gross revenues, additional expenses and assets or liabilities is not possible at this time. An increase in gross revenues to the law firm of \$10,000 in a fiscal year is required for that effect to be considered material. In general, it appears that increased parking space will benefit retail businesses more directly than it will benefit your law firm. Still, to establish materiality, you must determine how

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many new clients would have to seek the assistance of the firm to increase the gross income by \$10,000, in a fiscal year, and then project the number of new clients who would likely take advantage of the increased parking space to seek your services.

As was mentioned before, the parking commission has the authority to establish fees, rental rates or charges. Assessment of any of these upon the law firm could be considered added expenses to the firm. In order for such an action to have a material financial effect, the additional expense must amount to at least \$2,500 in a fiscal year. (Regulation 18702.2(g)(2).)

Under different facts, assume that fees are assessed only upon landowners within the district. If there is a pass-through provision in the firm's lease, the fee again would affect the expenses of the firm. If the additional expenses are \$2,500 in a fiscal year, the effect is considered material. (Regulation 18702.2(g)(2).) Of course, a specific effect cannot be determined until such time as the specific issue is brought before the parking commission.

In order to ascertain whether there is a material financial effect on the real property in which you and the law firm have an interest, Regulation 18702(b)(2) sets out specific thresholds. These thresholds concern the effect on the value of the real property in which you have an interest, rather than your real property interest. (Section 87103(b).) A decision is considered material if it will increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

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You would need to gather the facts relevant to the issues outlined in the regulation before attempting to calculate potential material effect on the property in which you and the firm have an interest.

Distinguishable from the Effect on the Public Generally

A governmental decision's effect on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect a significant segment of the public. (Regulation 18703.) The Commission has determined that the "public" consists of the residents and businesses of the jurisdiction of the agency in question. (In re Owen (1976) 2 FPFC Ops. 77, copy enclosed.)

The jurisdiction of an agency is not limited only to the physical property controlled by a governmental body. One must determine the constituency to whom the agency is accountable in order to define "jurisdiction". For example, the jurisdiction of a board of supervisors is the entire county, even though the board's land-use powers may only affect the unincorporated portions of the county. (See In re Legan (1985) 9 FPFC Ops. 1, 12, copy attached.)

In the present case, the parking commission was established and appointed by the city council. Should the parking commission be dissolved, the city council would take over its responsibilities. While the boundaries of the district presently include only the downtown area, the ordinance establishing the parking commission specifies that the parking commission "shall act for all vehicle parking districts established within the City..." (Ordinance Section 2.36.010). Moreover, while the parking commission is currently limited to addressing the parking problems within the downtown area, it has the option of recommending general fund revenues or city-wide bonds in addition to establishing rental rates, fees and other charges within the district for capitalization of downtown parking facilities. Indeed, the law authorizing establishment of parking districts assumes that there will be city-wide funding of facilities through bonds and general funds, together with local parking fees, meters and rentals. (Streets and Highways Code Section 35100, et seq.) In light of these facts we find that the "public" must include the residents and businesses in the entire City of Martinez.

Decisions regarding the downtown parking problem will not affect the entire city in the same manner as it will affect the

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downtown businesses, such as your law firm. Clearly the businesses within the district will benefit to a greater degree by easing the parking problem. The next question is whether the downtown business community constitutes a "significant segment" of the public.

Based on information you have provided, we know that 24% of the city's business licenses have been issued within the district. In other situations, we have concluded that a decision which affects less than one-fourth of the city's businesses does not affect a significant segment of the public. (See In re Brown (1978) 4 FPPC Ops. 19 and the Waggoner Advice Letter, No. A-85-089, copies enclosed.) In Brown, the Commission held that a decision affecting less than 50 percent of the retail business community did not affect a significant segment of the public. In Waggoner, we concluded that 72 percent of a city's businesses was a significant segment of the public. Therefore, we find that the effects of decisions of the parking commission affect your interests in a manner distinguishable from the public generally.

In summary, based on the information you have provided, and the statutory authority of the parking commission, we find that decisions of the parking commission will foreseeably affect your financial interests in a manner distinguishable from the effects on the public generally. The variable which is unknown at this time is the materiality of the the effect upon your financial interests within the district. I hope we have provided the tools necessary to allow you to determine when you may be faced with a conflict of interest as a member of the parking commission. If you have any further question regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DGM:LS:jaj
Enclosures



California Fair Political Practices Commission

August 24, 1987

Scott W. Gordon
Gordon, DeFraga, Watraus & Pezzaglia
611 LaJunta Street
P.O. Box 630
Martinez, CA 94553

Re: Your Request for Advice
Our File No. 87-223

Dear Mr. Gordon:

On August 12, 1987, we received your letter requesting advice as to the applicability of the Political Reform Act's conflict of interest provisions to your circumstances as a member of the City of Martinez Parking Commission.

As you may recall, on that same day I contacted you seeking clarification of the authority of the commission, and some information regarding its past actions. You agreed to forward additional documentation on these two points.

I have, as yet, not received the material we discussed. I am writing to inform you that, without this supplemental information I am unable to begin working on your question, and the time frame for responding to you will be extended accordingly. (See Regulation 18329(b)(3), copy enclosed.)

If you have any questions, don't hesitate to contact me at (916) 322-5901.

Sincerely,

Lilly Spitz
Counsel, Legal Division

LS:jaj

Enclosure

GORDON, DeFRAGA, WATROUS & PEZZAGLIA

A Law Corporation

Allan DeFraga
Thomas A. Watrous
James A. Pezzaglia
Timothy J. Ryan

AUG 11 9 30 PM '87

Peter D. Langley
Scott W. Gordon
Richard S. Bruno
Bruce C. Paltenghi

George R. Gordon
Of Counsel

August 10, 1987

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Letter Opinion Request

Dear Sir or Madam:

I am currently a member of the City of Martinez Parking Commission. The Commission serves as an advisory body to the City Council.

The purpose of this letter is to request, out of an abundance of caution, an opinion as to whether my ownership of certain business and investment property within the boundaries of the Parking District would preclude me from voting on recommendations and actions concerning the implementation of solutions to the current parking problem in the downtown Martinez area. Parking District No. 1 is the only such District in Martinez, and encompasses a 20-30 block area in downtown Martinez.

BACKGROUND TO THE REQUEST

I am a shareholder in the law firm of Gordon, DeFraga, Watrous & Pezzaglia (12 shares, 12% ownership interest, 100 shares outstanding and issued). Value is greater than \$20,000. The law firm is located within the District, but owns no real property.

I plan to become a shareholder in a local Martinez bank with headquarter offices located within the District at its original location. A branch will be opened September 1, 1987, outside the District. Value would be greater than \$10,000. Ownership proposed: approximately 800-1600 shares at \$12.50 per share (total

outstanding shares exclusive of new offering by Bank: 316,745; Bank's new offering: 160,000 shares; total which will be outstanding: 520,745. 1600 shares as a percentage: .00307.). The Bank does not own real property within the District. No dividends have been paid on stock previously issued.

Currently, the Parking Commission has commissioned a study to evaluate the critical downtown parking problem the District faces. One or more of the solutions to be proposed may involve the capitalization and erection of a parking structure for the benefit of the District. Because the District is relatively small, the proximity of available properties for parking structures to the location of both the law firm and the bank is close (1 to 2 blocks away). One location proposed for a structure is one block away, and is currently a surface parking lot (metered).

I expect the Parking Commission to take up the matters under study by September 8, 1987.

DISCUSSION

I do not believe that my ownership interest in either or both the bank and the law firm would preclude me from participating in and voting on parking solutions, including the capitalization and erection of one or more structures. It is my belief that any "benefit" to either the bank or the law firm would be of no different character or type than would accrue to other businesses and residents within the District. Everybody, including employers, employees, customers, business guests and others needs to be able to park. The obvious purpose of having the District, and to commissioning the study, is to alleviate the current parking crisis in the downtown area, and to accommodate foreseeable new demand. It should be noted that the Commission serves the City Council in an advisory capacity, having the power to make final recommendations.

This letter request is being made in the interest of openness to confirm my belief that there is no legal reason why I should not participate in the implementation of parking solutions.

Fair Political Practices Commission
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REQUEST

On the basis of the foregoing, I respectfully request an opinion from the Fair Political Practices Commission as to whether I should excuse myself from participation and voting, or to proceed with the discharge of my duties as I intend to do.

Very truly yours.

A handwritten signature in black ink, appearing to read "Scott W. Gordon", written over the closing "Very truly yours.".

SCOTT W. GORDON

SWG/mat/3563g

GORDON, DeFRAGA, WATROUS & PEZZAGLIA

A Law Corporation

Allan DeFraga
Thomas A. Watrous
James A. Pezzaglia
Timothy J. Ryan

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Peter D. Langley
Scott W. Gordon
Richard S. Bruno
Bruce C. Paltenghi
George R. Gordon
Of Counsel

August 24, 1987

Ms. Lilly Spitz
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Re: 87-223

Dear Ms. Spitz:

This letter is a follow-up to our telephone conversation of August 14, 1987 concerning my August 10, 1987 request for an opinion concerning my membership on the Martinez Parking Place Commission.

In our telephone conversation you requested information concerning the advisory nature of the Parking Place Commission and further requesting a copy of the relevant Municipal Code enabling legislation for the Parking Commission.

I looked into the matter and have enclosed a copy of Martinez Municipal Code Chapter 2.36 and amendment thereto. As I indicated to you on the telephone The Commission has operated as advisory to the City Council. The only two major decisions that we have made (one to fund a parking study, and a second to allow an annexation to the District) were both submitted to the City Council for approval following approval from the Parking Place Commission. We did vote to switch some 15-minute meters to the corners of blocks without Council approval. I have clarified with the Assistant City Manager that on matters involving any commitment of general fund revenues, or altering the boundaries of the District, the Commission's

Ms. Lilly Spitz
August 24, 1987
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actions are advisory. As to matters involving conduct of District business (meters, assessments, number of spaces, etc.) the Parking Commission is not advisory.

I trust the foregoing has been of assistance to you in evaluating my request. Should you need any additional information or have additional thoughts, please don't hesitate to call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Scott W. Gordon", written in dark ink.

SCOTT W. GORDON

SWG/mat/3612g

Enclosure

RECEIVED

MAR 11 1987

ORDINANCE NO. 1086 C.S.

RECONSTITUTING THE PARKING PLACE COMMISSION

SECTION 1. Ordinance 989 C.S. Section 1 and Section 2.36.010 is amended to read as follows:

The Parking Place Commission of the City shall consist of five (5) members and shall act for all vehicle parking districts established within the City, under the provision of the Parking District Law of 1951, Sections 35100, et seq, of the Streets and Highway Code of the State. Members of the Parking Place Commission shall serve without compensation.

SECTION 2. Section 2.36.020 is amended to read as follows:

Each member of the Commission shall be a resident and qualified elector of the City.

SECTION 3. Ordinance 989 C.S. Section 2 and Section 2.36.030 are amended to read as follows:

Members of the Parking Place Commission shall hold office for the term of four (4) years from the date of their appointment and qualification and until their successors are appointed and qualified. Terms of office shall expire yearly and no more than two (2) terms shall expire in any one year. Initial appointments shall be one (1) term for one (1) year, one (1) term for two (2) years, one (1) term for three (3) years, and two (2) terms for four (4) years.

SECTION 4. The City Clerk is hereby directed to cause this ordinance to be published in the Martinez News Gazette, a local newspaper of general circulation.

SECTION 5. This ordinance shall take effect thirty (30) days after its adoption, provided it has been published in the manner required by law for the adoption of ordinances.

APPROVED: _____

Michael Menesini, Mayor

ATTEST: _____

City Clerk

* * * * *

ADMINISTRATION AND PERSONNEL

- H. To encourage and solicit volunteer contributions of work and/or expertise in restoration of the Cemetery.
 - I. To encourage volunteers to work on a project of writing a general history of the Alhambra Cemetery to be printed in simple form with copies to be made available to the public at "cost of printing".
 - J. To assist the City staff in applying for federal and state funds to be used in restoration and maintenance of Alhambra Cemetery.
 - K. To review the annual report of the Tavan Trust Fund for Alhambra Cemetery.
- (Ord. 1069 C.S. § 1, 1986: Ord. 1039 C.S. § 15, 1985: Ord. 929 C.S. §§ 1, 2, & 3, 1980.)

CHAPTER 2.36

PARKING PLACE COMMISSION¹⁰

2.36.010 Membership and Compensation.

The Parking Place Commission of the City shall consist of five (5) members and shall act for all vehicle parking districts established within the City, under the provision of the Parking District Law of 1951, Sections 35100 et seq. of the Streets and Highways Code of the State. Members of the Parking Place Commission shall serve without compensation. (Ord. 1086 C.S. § 1, 1987: Ord. 989 C.S. § 1, 1983: prior code § 2950.)

2.36.020 Residence not Required.

Each member of the Commission shall be a resident and qualified elector of the City. (Ord. 1086 C.S. § 2, 1987: Prior code § 2951.)

2.36.030 Terms of Office.

Members of the Parking Place Commission shall hold office for the term of four (4) years from the date of their appointment and qualification and until their successors are appointed and qualified. Terms of office shall expire yearly and no more than two (2) terms shall expire in any one year. Initial appointments shall be one (1) term for one (1) year, one (1) term for two (2) years, one (1) term for three (3) years, and two (2) terms for four (4) years. (Ord. 1086 § 3, 1987: Ord. 989 C.S. §2, 1983; prior code § 2952.)

ADMINISTRATION AND PERSONNEL

2.36.040 Powers and Duties.

The Parking Place Commission herein created shall have all of the powers and duties appointed by the authority of the Streets and Highways Code of the State, Section 35550 et seq. (Ord. 810 C.S. § 1, 1975: prior code § 2953.)

CHAPTER 2.38

PARK AND RECREATION COMMISSION

2.38.010 Commission Established.

- A. The Park and Recreation Commission shall consist of seven members who shall be appointed by the City Council. Residence within the corporate limits of the City shall be a requisite for membership on the Park and Recreation Commission. The City Council will make appointments for staggered terms of office. Four of the terms shall expire on June 30, 1982 and three terms shall expire June 30, 1984. All subsequent appointments shall be for four years or until a successor's appointment is confirmed. (Ord. 927 C.S. § 1, 1982.)
- B. Members of the Commission shall serve without compensation. (Ord. 842 C.S. § 1, 1976.)

2.38.020 Organization of the Commission.

Annually, the members of the Commission shall meet in regular session and elect from their members a chairman and a vice-chairman. These officers shall perform the normal and customary duties associated with these offices. Officers shall hold office for 1 year, or until their successors are elected.

The Commission shall adopt rules and regulations to govern procedure and shall by vote set a time for regular meetings which will normally be held once each month and shall determine the manner in which special meetings may be held and the notice given. A majority of the regular members shall constitute a quorum.

Minutes of the Commission meetings shall be filed with the City Clerk and copies shall be forwarded to the City Council and City Manager. (Ord. 842 C.S. § 2, 1976.)



California Fair Political Practices Commission

August 13, 1987

Scott W. Gordon
Gordon, DeFraga, Watrous & Pezzaglia
P.O. Box 630
Martinez, CA 94553

Re: 87-223

Dear Mr. Gordon:

Your letter requesting advice under the Political Reform Act was received on August 12, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:jaj